

REMARKS

Claims 15-18, 20 and 22-40 are pending in the present application. In the Final Office Action mailed September 13, 2007, claims 22-26 and 28-30 have been allowed, and claims 15-18, 20, 27 and 31-40 stand rejected. Non-entry of the amendment submitted October 25, 2007, in response to the Final Office Action is respectfully requested. Claims 15, 20, 22, 27, 31 and 33 have been amended above. Support for the amendments can be found in Figures 2, 4 and 5 and from page 10, line 1 to page 11, line 18, for example. A Request for Continued Examination is submitted herewith, and consideration and allowance of the present application is respectfully requested.

Applicants thank the examiner for the suggested changes to place the application in condition for allowance. The suggested changes to the allowed claims have been made. Furthermore, the rejected independent claims 15 and 31 have been amended and are believed allowable along with their respective dependent claims.

Claim 27 was objected since it was considered unclear whether the steps recited are replacement steps or additional steps. Claim 27 has been amended as suggested by the examiner to recite "cutting further includes" to address the objection. Withdrawal of the objection to claim 27 is respectfully requested.

Claim 33 was rejected under 35 USC §112, second paragraph for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. It is noted that the last two lines of claim 33 recite that the second height is greater than the third height. However, these lines were intended to recite that the second height is greater than the first height. This configuration is shown in Figure 5 and discussed at page 10, where height h of first non-cutting portion approximately equals d1 of the implant, height H of the distal, second non-cutting portion 36 approximately equals d2 of the implant, and height d2 is greater than height d1 (page 9, line 5-6) and so height H is greater than height h. The third height of the cutting portion is greater than each of heights h, H as shown in Figure 5. Amended claim 33 meets the requirement of 35 USC §112 and withdrawal of this basis of the rejection of claim 33 is respectfully requested.

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Claim 22 has been amended as suggested by the examiner and is allowable as indicated in the Final Office Action. Claims 23-30 depend from claim 22 and are also allowable.

Claim 20 has been amended along the lines suggested by the examiner for claim 22. Accordingly, claim 20 is also allowable as amended.

Independent claims 15 and 31 stand rejected under 35 USC §102(b) as being anticipated by EP 0646366 to Steffee. Steffee discloses an implant 10 that is engaged to inserter instrument 80. Inserter instrument 80 includes a proximal handle 84, a distal clamp portion 86, and an intermediate cylinder 82 that extends between handle 84 and clamp portion 86. Clamp portion 86 is received in cylinder 82 and includes movable clamp halves 130 with extensions 136 defining inner surfaces 138 to receive implant 10. Clamp halves 130 are moved toward one another by drawing clamp portion 86 into cylinder 82 so that extensions 136 engage planar surfaces 64 in recesses 60, 62 of implant 10. See col. 4, line 26, to col. 5, line 38. When implant 10 is engaged to instrument 80, cylinder 82 and extensions 136 are located adjacent the proximal end of implant 10, and there is no portion of instrument 80 or any other structure that that extends in a distal direction from the distal end of implant 10.

In contrast, amended claim 15 recites, in combination with the other features therein, “a proximal handle connected to an elongate shaft, said shaft extending along a longitudinal axis in a distal direction from said proximal handle to an opposite distal end, said shaft being configured to rotate about said longitudinal axis; a first non-cutting portion adjacent said distal end of said shaft, said shaft extending through said first non-cutting portion and being configured to rotate relative thereto; a cutting portion fixed to said shaft to rotate therewith, said cutting portion including a first end located toward said first non-cutting portion and said cutting portion extends in the distal direction from said first end along said longitudinal axis to a second end opposite said first end, said cutting portion including a first pair of generally parallel opposing faces and a second pair of opposing faces each extending between said first pair of faces, said second pair of faces each defining a number of teeth; a second non-cutting portion fixed to said cutting portion, said second non-cutting portion defining a distal head extending in the distal direction from said second end of said cutting portion....” Claim 31 recites a similar arrangement. Since Steffee

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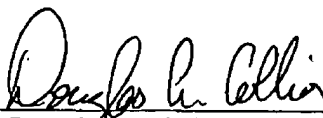
does not disclose the features arranged as recited in claims 15 and 31, it cannot anticipate claims 15 and 31.

With respect to claims 16-18 and 20 depending from claim 15, they are allowable at least for the reasons claim 15 is allowable. With respect to claims 32-40 depending from claim 31, these claims are allowable at least for the reasons claim 31 is allowable.

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance with pending claims 15-18, 20, and 22-40. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: _____



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